124

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Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1–15

Part B. for

SUBJECT.

Manual of procedure, re Extradition of Criminals, prepared by the Madras Government.

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Forwarding an extract from the draft copy of Ex tradition Act. Requesting the suggestions which the Durbar may have to offer on the subject of the instructions contained therein.

Sl No. 2. To the I.G. of Police Do. of 26-1 1900
Forwarding a copy of the Manual for such remarks as his wide experience as District Magistrate as I.G. of Police may suggest.

No. 3 From the Dy of Police Do dy 28/1/1900
Stating that the Manual appear to be in accordance with the existing rules & practice and to convey clear instructions for the guidance of the officers concerned -

2 From the Asst Secy Do dy 1-2-1900
Forg a copy of telegram sent to the Dts Magts of other Districts and asking him to send the information re the warrants received in the District for breach of Contract from Madras Presidency

3 From the Dt Magt Chengalpat Do dy 2-2-1900
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4 From the Dt Magt Nellore Telegram dy 2-2-00
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Stating the fee is Rs three for the warrant

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Stating the fee is Rs 3 for each warrant

16 To the Collector Do 9131½-5-9-2-00
Stating that the instructions in the draft Manual appear to represent the same with substantial accuracy so far as the practice at present in force is concerned -

J. 563 Legis: 31.

Pol. 711. 189 5166 4-12-99

From

The First Apptt Resdt in Mysore

To

Dewan No. 31.

~~The Secretary to the Govt of India~~ ~~Sor~~, Rev. and Gen. Depts.

GOVERNMENT OF MYSORE
LEGISLATIVE DEPARTMENT

Dated 1-12-99

Despatched

Received

General No. 5440

No. 3-81

Enclosure No.

Forwd: an extract from the draft Copy of Extradition Act requesting the suggestions which the Durbar may have to offer on the subject of the instructions contained therein.

Jud Bx

References to be marked.

Mr Crawford Clerk of Legislative Council

4-12-99

11/12

Submitted. Legislative Council Bill may be referred to the Chief Court for opinion. AK 8/12/99

No. 5440
3·81

FROM

THE FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

Secret No 1.

To

The Dewan of Mysore.

Dated, Bangalore, 1st December 1899.

Sir,

A manual of procedure to be followed in connection with the extradition of criminals is, under the orders of the Madras Government, now under preparation for the guidance of magistrates and police officers in the Madras Presidency. I am directed to forward an extract from the draft copy of this manual and to request that the Resident may be favoured with any criticisms or suggestions which the Durbar may have to offer on the subject of the instructions contained therein.

I have the honor to be

Sir,

Your most obedient servant

First Assistant Resident.

Please type this in D-O Form
26.1.00

Bangalore
26th Jany 1900.

Serial No 2.

My dear Sir, 3

The Madras Govt have under preparation a "Manual for the guidance of Magistrials and Police officers in the Madras Presidency."

The Resident has forwarded an extract from this, relating to the Extradition of Criminals, and wishes to have the Durbar's criticisms & suggestions on the instructions contained therein.

What we have chiefly to do is to satisfy ourselves that the existing practice and orders as regards Mysore have been correctly embodied in the Manual.

The Officiating Dewan asks me to send you a copy of the extract for favor of such remarks as your wide experience as District Magte and as Inspector General of Police may suggest.

As the matter is urgent and the Residency has already sent in a reminder, I am to

request you to send a very early reply.

I am, My dear Sir,
Yours sincerely

26.1.00.

A. Rangaswami Iyengar Esqre BA, BL
Inspecting General of Police in Mysore

16 No 3

Bangalore
28 January 96

4

My dear Mr. Chandrasekhara Iyer,

I am in due receipt of your letter of the 26 instant forwarding extracts from the manual under preparation in Madras for the guidance of Magistrates and Police Officers in the Madras Presidency, for my opinion. I have carefully read them and compared them with the existing references on the subject. They appear to be in accordance with the existing rules and practice and to convey clear instructions for the guidance of the officers concerned. There is one error however which I have noticed in the amount to be remitted with warrants for the arrest of accused persons under the Breach of Contract act. It

Need

shewed be Rs 3/- instead of Rs 5/-
vide Government Notfn. No 342
dated 26 March 1894. 1884

I would also beg to submit the following observations with reference to clauses (a) & (b) of art: 84 sec: IV. I think they might be made more clear as to the persons coming within the purview of each clause. A European British Subject is not liable to be surrendered under clause (a) but under clause (b) which refers to section 4, any person whether a European British Subject or not, would seem to be liable. The difference between the two clauses is not therefore wholly in the nature of the offences for which the Extradition of the criminal is required. It will be well therefore to amplify the two clauses so as to make it clear that while under clause (a) Extradition could be obtained only for the Scheduled offences and of persons who are not European British Subjects, under clause (b)

all persons including European British subjects are liable and that even for offences not contained in the Schedule under the Extradition Act.

In this connection I would also beg to state that the ruling of the Resident that the Mysore Durbar was precluded by section 17 of the Instrument of Transfer, from applying under section 44, for the surrender of a European British subject, is open to question. Para 17 of the Instrument of Transfer is as given in the margin. The words "shall continue" in this para would imply that it was not intended to introduce any change in the existing practice.

The Government of India in discussing the question of reciprocity of processes in Mysore, observed "And as the Chief Commissioner is administering a foreign State, he

× "Ordinary Criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect of European British subjects as may from time to time be delegated by the Governor General in Council."

he may apply to the British
Government under section 14
of the Act for the surrender
of any person whether a
British subject or not who is
accused of having committed an
offence in Mysore." From the
remarks of the Government of
India in the preceding and
subsequent portions of the same
letter it may be assumed
that if it was their intention
to exclude European British
subjects from the operation
of the section as regards Mysore,
they would have definitely
said so. As already submitted,
para 17 of the Instrument of
Transfer does not profess to
stipulate for anything new on
behalf of the Governor General
in Council or to take away
any existing power from the
Mysore Government. It may
also be affirmed that the
latter part of para 17 of the
Instrument of Transfer that
the Maharaja shall exercise
any such jurisdiction in respect
of

of European British subjects as may from time to time be delegated by the Governor General in Council is not necessarily prospective in its operation or imply that the Supreme Government had no jurisdiction whatever little then. It may be argued therefore that the right which the Administration hitherto had to take any proceedings in the case of European British subjects did still vest in the Administration.

Again though the provisions of the Extradition Act cannot affect the provisions of any law or treaty for the time being in force as to the Extradition of offenders, it will be observed that there is no express stipulation as to Extradition in para 7 of the Instrument of Transfer nor is the wording such as to imply that the Government of India intended to

to take away any concessions contained in a general enactment applicable to all Native States.

Further after section 1 of the Criminal Procedure Regulation providing that "nothing herein contained shall be deemed to confer any jurisdiction in proceedings against European British subjects" was enacted, Notification No: 20 dated 7 April 1886 was passed by the Nyasa Government with the permission and approval of the Government of India defining that the expression "jurisdiction" in that section shall be held to mean "jurisdiction to enquire into or try a charge". From this it may be argued that the word jurisdiction in Article 17 of the Instrument of Transfer should also be construed in this sense and the Government of Nyasa was competent to take all such proceedings against

against European British subjects as an ancillary to an inquiry or trial against such European British subjects.

The question is not without its difficulties but I believe that on a most careful consideration of the previous practice and reference on the subject, the right of the Mysore Government to apply for extradition of a European British subject under section 4 of the Extradition Act cannot be well denied and I would suggest that this is a good opportunity to secure a final decision on the point.

Yours very sincerely,

A Langrana

Li 204

My dear Mr. Puttanna Chetty.

Herewith I send you a copy of the telegram sent by me to the District Magistrates of the other Districts in the State. Kindly let me have the information called for as quickly as possible.

Yours very sincerely.

(Sd) C. Srinivasa Iengar.

1. 2. 1900.

J 808

7419
DF 5-2 — 1897. 900

From The District Magistrate of Muzaffarnagar

To The Secy: to the Govt of Bengal General & Revl: Depts

6

Dated 2nd February 1900

Despatched

Received

General No. 681 & 1897-900
No. 37

Enclosure No. —

With reference to his telegram of 1st inst: stating that two warrants are found to have been executed in this District for breach of contract from Madras presidency

Jud
5.2.1900

No. 681

37

Serial No 5

Mercara District

Deputy Commr's Office

Mercara 2nd February 1900

To

The Secretary to the Govt of Bombay

General and Revenue Departments

Sir,

I have to report telegram dated Bangalore 1st February 1900 requesting information regarding the amount of fee levied in this District for breach of Contract warrants from the Madras Presidency as distinguished from Coorg. I have the honour to state that on careful search of the records being made, no such warrants are found to have been executed in this District for the last three years. The Government order prescribes three rupees for all such warrants issued other than under section 2 of Act XIII of 1859, this distinction being made between Coorg and other British Territories

I have the honour to be

Sir,

Your most obedient Servt

Balumpudemmudeyya

for District Magistrate

Mr Cook

Bangalore
2nd July 1900
7.45 P.M.

Dear Sir

With reference to your D.O. of yesterday's date I beg to state that the fee levied in this District on breach of Contract Warrant to both from the Madras Presidency and Coorg is Rupees 3/- for each person.

Yours most obedly.

P. Sita Ramiah

T—14.

Class. | INDIAN TELEGRAPH. | Monthly Local No.

To | From

Station | Station

Words.	Day.	Hour.	Minute.	Official Instruction.

To (Person) | From (Person)

8

2 Qr
copies thereof will be served
under government Notes dated
13996/1460 dated twelfth
1707/1707
June 1899 and numbers wanted

BANGALORE
2 FE
00
CENTRAL POS

X 13996/1460 dated
1707 X 1707

Recd. from	L. N.	Sent to	L. N.
At Hrs.	Mts. By	At Hrs.	Mts. By

Date

Postmaster.

T—14.

Class. (i) | INDIAN TELEGRAPH. | Monthly Local No.

To Station Bangalore City | From Station Bhadravati

Words.	Day.	Hour.	Minute.	Official Instruction.
32	2	16	10	NIL

To (Person) | From (Person)

1 Bhadravati

2 Dept.

3 Permanent of crew prescribed

4 time during Dec Lucky warrant

5 expired recently here

6

7

8

9

10

11

12

13

14

BANGALORE CENTRAL POST 2 FE. 00

Recd. from	L. N.	Sent to	L. N.
At Hrs.	Mts. By	At Hrs.	Mts. By

Date Postmaster.

T—14.

Issued En 9

Class. 12 | INDIAN TELEGRAPH. | Monthly Local No. 11

To Secretary to Govt of India Home Dept | From Chitaldroog Station

Words.	Day.	Hour.	Minute.	Official Instruction.
27	2	13	hrs	OPD 1/10

To (Person) Secretary to the Government of India Home Department

From (Person) District Magistrate

1 Home General and Revenue
2 Departments
3 (re) Papers three Levied Breach
4 of Contract Warrants Cut-
5 tack very rare)
6
7
8
9
10
11
12
13
14

BANGALORE 2 FE 00 CENTRAL POST

Recd. from	L. N.	Sent to	L. N.
At Hrs.	Mts. By	At Hrs.	Mts. By

Date

Postmaster.

Class. T.P. | INDIAN TELEGRAPH. | Monthly Local No.

To Station | From Station

Words.	Day.	Hour.	Minute.	Official Instruction.

To (Person) | From (Person)

1
2
3
4
5
6
7
8
9
10
11
12
13
14

BANGALORE CENTRAL POST 2 FE. 00

Recd. from L. N. | Sent to L. N.

At Hrs. Mts. By | At Hrs. Mts. By

Date *Postmaster.*

T—14

Class. | INDIAN TELEGRAPH. | Monthly Local No.

To Station | From Station

Words.	Day.	Hour.	Minute.	Official Instruction.

To (Person)

From (Person)

1

2

3

5

6

7

8

9

10

11

12

13

14

BANGALORE 2 FE. 00 CENTRAL POST

Recd. from	L. N.	Sent to	L. N.
At Hrs.	Mts. By	At Hrs.	Mts. By

Date *Postmaster.*

T—14.

Serial No 12

Class. | INDIAN TELEGRAPH. | Monthly Loc.

To Station | From Station

Words.	Day.	Hour.	Minute.	Official Instruction.

To (Person) | From (Person)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

RECEIVED 2 FEB 00 BANGALORE

Recd. from	L. N.	Sent to	L. N.
At Hrs.	Mts. By	At Hrs.	Mts. By

Date *Postmaster.*

Srirangam

3.2.1908.

Received 5/2/08

11 Ro 13

My dear Sir,

Your telegram
of the 1st re Jar
buried on breach of
contract warranty
reached Kolar on the
2nd and has just

[illegible] [illegible] with my
(b. 1890)
hands. The Gods!
P. Moonshi being
in camp with me
the wire could not
be replaced from
H.Q. Jus. I have
sent a reply modern
to Kohat to be

hired from there
and trust it
will reach you
without delay
and hours today
With kind

regards,
Yours very sincerely
R K Laxman

T-14.

Class. Q | INDIAN TELEGRAPH. | Monthly Local No. 1/5

To Station Bangalore 10 Q | From Station Kolar

Words.	Day.	Hour.	Minute.	Official Instruction.
31	3	17	25	

To (Person) ~~Secretary to~~ the government of [illegible] | From (Person) Police Magistrate of Kolar.

1
2 120 rupees three fs
3 towards contract warrants
4 from mowers [illegible]
5 Sirsi per Sanjeeva.
6
7
8
9
10
11
12
13
14

BANGALORE CENTRAL POST 3 FE 00

Recd. from L. N. | Sent to L. N.

At Hrs. Mts. By | At Hrs. Mts. By

Date Postmaster.

Serial
No 15

No. X X

To

The First Asstt to the
Resdt in Mysore.

No: 9139½
J835 } 9-2-1900.

Sir,

I am directed to acknowledge the receipt of your letter no. 5440 dy the 18th Decr. 1899, forwarding an extract from the draft Manual of procedure in connection with the extradition of criminals, under preparation at the instance of the Madras Govt.

2. Passing over the question of the simplification of the existing procedure in regard to extradition, — a subject on which the Darbar have sufficiently expressed their views on other occasions, — I am directed to observe that, so far as the practice at present in force is concerned, the instructions in the draft Manual appear to ~~confirm~~ represent the same with substantial accuracy

Received in 1st Clk
5/2/00

1808/1

appr as
alld.
as the prov:
of 1886 now
drafted & the
Dewan shall
be glad if the
Secy will show
this to the Dewan
& mention the
facts from resp
upon

5/2/1900

Please fair copy this &
send to me for signature
tomorrow - I will then
hand the matter to
the Dewan either
this evening or tomorrow
morning -

7-2-1900

Done - Dpatch
9/2/00.

3. I am, however, to point out that, in line 12 of para 43, the words "the Schedule to" should be prefixed to the words "the Instrument of Transfer."

4. The Darbar also consider it necessary, to state ~~for the Resident's information~~, that, while in para 44 of the Manual ~~correctly represents the fee~~ (Rs -) ~~payable, under the~~ orders in force, ~~for the execution~~ of warrants ~~under the Breach~~ of Contract Act, the practice nevertheless has, through a regrettable misconception of these orders on the part of all concerned, been since some time at variance therewith. On this point I am to offer the following explanation:

5. In the Chief Commr's Order of the 21st Jany 1879, No. 8761-Jud 12, the fee in the case of warrants issued by Magistrates in the Madras Presy under that Act was fixed at Rs 7; but this was subsequently reduced, by Order No 4670-J. 77 of the 16th

with reference to the fee of Rs 5 mentioned that, subsequent thereupon of Fin W 13020-7-778 of the 19th July 1891, a copy of which was sent herewith to this Admn W 13019 of 19th Idem / 6/12 districts, the actual fee levied is only Rs 3.

Septr 1879, to Rs 5 as regards ~~the~~ warrants for the Wynaad, the reduction being ~~subsequently~~ done after (i.e. in the Chief Commr's Order no 5940 — J. 107 of the 17th Novr 1879) made ~~applicable~~ of general application to warrants issued in any District of the Madras Presidency. ~~These orders have not been superseded or modified, and must be deemed to be still in force as regards Districts of the Madras Presidency.~~

6 As regards the adjacent territory of Coorg, however, a representation made by the Chief Commr of that Province in 1884 resulted in the fee being reduced to Rs 3, under the Dewan's Notification No. 342 of the 26 March 1884, the relevant portion of which is as follows:- "In supersession of the existing orders on the subject, the Dewan directs that a fee of Rs 3 be charged for executing in Mysore the first warrant that may be issued from Coorg under the Breach of Contract Act."

This Notification evidently does not affect the amount of fee already prescribed in respect of Madras districts, though the

Correspondence between the Coorg and Mysore Governments ~~[illegible]~~ in more than one instance refers to this ~~[illegible]~~ appeal for some unaccountable reason, as being ~~[illegible]~~ four annas, instead of five. I beg now to invite attention to ~~[illegible]~~ para 2 of the Hon'ble Mr. Devan's Order C. No. 1234-41 dated the 16th Nov. 1886, which was also the result of correspondence with the Chief Commr. of Coorg, and which was communicated to the latter with this Office letter No. C. 1242 of the 19th idem. ~~The~~ Para 2 of ~~the said Order~~, ~~which purports to do nothing more than indicate the existing practice, and therefore cannot have any modifying influence thereon, contains the only element in embodied a double error in stating~~ that "I was asked that" warrants issued by Magistrates in the Madras Presy. in Coorg under Act XIII of 1859, other than under s. 29 of that Act, must as heretofore be accompanied by a fee of Rs 4 for each person whose arrest and delivery is required," etc. This, ~~as is obvious~~, ~~embodied a double error~~, and elicited an enquiry from the Chief Commr. of Coorg* as to whether "Rs 4" was not a clerical error, ~~the Accountant~~ for "Rs 3."

* Vide his Office No. 96-1706 of the 17th January 1889

1887

× Chief Secy's No. 7274-704 of the 4th Feby 1887.

It was affirmed in reply that it was, and that Rs 3 was the fee; and an Erratum Notifn. (No. 7198-7205 / J.-225 of the 2nd Feby 1887) to this effect was simultaneously published.

Unfortunately, this Notifn was the cause of a further error of fact as regards the fee for Madras Districts, — an error which found expression in the Darbar's Proc. No. 1302-7-278 of the 19th Feby 1891; wherein, as the absence of a reference made by the District Magte of the Nilgiris, it is stated, in general terms, to have been "clear that the fee, where it is payable, is Rs 3 only."

were found overlooked the fact that a fee of Rs 5 was found payable in the Cuttack Division of Madras Sub as per orders of 16 Sept 87 & Nov 1879 — Para 464 of the Manual thereon correctly represents the fee payable as Rs 5 ——

The matter, it will accordingly be seen, lies in some degree of confusion, which is not relieved by the fact that, since the order of 1891, the practice in Nyasa ~~appears to~~ has been to levy a fee of three Rs only as regards both Madras and Coorg warrants.

Under these circumstances the Darbar would feel obliged if the Resident will kindly ~~take this occasion to~~ point out to the Madras Govt. the misapprehension which has so unwittingly arisen ~~in the matter~~ on the subject.

I have etc.

5-2-00.

8 "It however is desired that the concession granted under the Resident's letter of the 5th February 1900 may be withdrawn forthwith.

Note. The Judicial Branch will carefully check the references before issue.

For the time 5-ii Rules 4 & 5 of the Manual.

Existing Practice.

As regards the execution of British processes in Mysore. The G. G. in Council was of opinion that to enable the Mysore Courts to respect the civil and criminal processes issued by the Courts of British India, nothing more was required than an executive order of Govt. Accordingly, two Notifns applicable respectly to Criminal and Civil processes were issued by the Chief Commr on the 23d July 1878. The former (No. 111) ran as follows:-

"Under the authority of H.E. the V. and G.G. in C., the Ch. Comr directs that all criminal processes of whatsoever description, when issued by any Magistrate having jurisdiction in any District of British India, shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions and in the same manner as if such process had been issued by a Magistrate having jurisdiction in Mysore.

Summonses and Warrants and other processes issued by Magistrates in the Madras districts for execution in Mysore may be sent by post direct to the Magistrates of Districts or Talukas in Mysore

Madras Manual

The arrangements in force for obtaining the arrest and return of offenders escaping from British India into Mysore date from the time when Mysore was administered by a Chief Commissioner under the Govt. of India.

The Chief Commr. directed by a notifn., dated 23rd July 1878, that all criminal processes of whatever description issued by any Magistrate having jurisdiction in any District in British India should be acted upon and executed by Magistrates and Police officers in Mysore upon the same conditions, and in the same manner, as if they had been issued by a Magistrate having jurisdiction in Mysore.

Upon the rendition of the State, this provision was included in the instrument of transfer, as one of the rules which the Darbar was bound to maintain, and the conditions are therefore now the same as before the rendition.

When the surrender of a fugitive escaping to Mysore is desired, a British Magistrate may send his warrant or summons by post to the Magistrat

Such processes should be accompanied by postage labels sufficient to cover the cost of return postage. When unaccompanied by any remittance, the warrant or summons will, after being executed, be returned by post "Bearing."

Warrants, other those issued under the provisions of Act XIII of 1859, will be executed by Police Officers in Mysore, and the persons arrested under such warrant will be conveyed by them to the frontier and handed over to the nearest Police station within British territory, where arrangements will be made to receive all prisoners so delivered. In all these cases, the cost of batta to the prisoners and of the guards required to escort them to the frontier will be borne by the Mysore State.

of the District or Taluk in Mysore in which the offender is supposed to have taken refuge.

Postage stamps sufficient to cover the cost of return postage should accompany the process.

In the case of a warrant the offender will be arrested by the Mysore police, who will convey him to the frontier and hand him over to the officer in charge of the nearest police station in British territory.

Arrangements should be made for relieving prisoners so delivered, and producing them before the Magistrate.

In any case in which it may appear to be desirable, the warrant, instead of being sent by post, may be handed over to an officer of the British police who will produce it before the Magistrate having jurisdiction in that part of Mysore in which the fugitive is supposed to have taken refuge.

The further steps for the arrest of the offender will then be taken by the Mysore authorities, and the policeman taking a warrant into Mysore territory should on no

account himself arrest an offender; his action should be confined to assisting the Mysore police, if required to do so.

Warrants issued by Magistrates in the Madras Presy under Act XIII of 1859 must be accompanied by a remittance of Rs 5-0 for each person whose arrest and delivery is required; and in consideration of such payment, all charges incurred within the State in providing food and escort for prisoners will be defrayed by the Mysore State. — Chief Comr's order No 8761-Jud 12 of 1878 (9 Jan 1879)

⊗ Reduced from Rs 7, under Ch Comr's order No 4670-J-77 of 16-9-25

The charge of Rs — for each accused person for whom a warrant is issued is an average to cover all cases whether the actual cost be greater or less. When therefore the person cannot be found, the charge nevertheless is made and should not be refunded. — No 12290-Jud 210 31-3-79

Warrants & other processes issued under S. 2 of Act XIII of 1859 for the apprehension of accused parties who may have failed to comply with an order of a Magistrate issued under that Section and Act are to be executed free of cost. — 7291-J-1490 12-1-80 (Does this apply to Coorg, & to Travancore?)

EXTRADITION TO NATIVE STATES IN INDIA.

The law which regulates the procedure to be followed in British India upon the receipt of requisitions for the surrender of criminals who have fled from justice out of a

* As regards Coorg, the fee for executing the first warrant is Rs 3-0 & the second and succeeding warrants will be executed free of all charge in cases in which the first warrants remain unexecuted. — Notfn No 34 dd 26-3-84

Magistrates in this Presidency receiving warrants of arrest directed to them by Political Agents under s.12 of Act XXI of 1879, are bound to execute such warrants, and are not authorised to make any enquiry as to the sufficiency of the evidence against the accused person.

It is for the Political Agent to satisfy himself before he issues his warrant that a prima facie case has been established.

The Advocate General, Madras, had drawn a distinction between (1) cases where the offence has been committed in any of those States specially connected with India, in which the G. G. in Council has a power and jurisdiction which is exercised by a Political Agent, and (2) cases where the offence is committed in some State where there is no such Indian jurisdiction, or in some other part of H. M.'s Dominions; and had ~~some~~ sought to confine to the second of these cases the operation of S. 14, while Ss. 11 & 13 applies to the first - The Govt of India, however, were unable to accept this distinction between Native and Foreign States. At the same time they considered that the discretionary power which the Local Govt possess in complying with applications for extradition under Act XIII of 1859 should be very sparingly exercised, and they were advised that no offence under that Act could be deemed to be complete, unless and until there had been default in complying with an order passed by the Magistrate under S. 2. — J. A. R's No 2794 of 3-7-97

Mr. Lee-Warner has previously suggested that S. 14 of the Extradition Act provided a means for securing the extradition of any offender, whether his offence be a heinous one scheduled for the purposes of S. 11 or an offence not included in the schedule, and that the Darbar ought to by the effect of S. 14 by making a requisition for the arrest of any offender of the

(b) By making a requisition to Government (s. 14).

The latter procedure will usually be adopted only in cases in which the Political Agent is not competent to surrender the fugitive, that is to say, in the case of petty offences.

Where an application was made by the Darbar in 1897 & under S. 14 of the Foreign Jurisdiction and Extradition Act for the surrender of a European British subject (Wyche) accused under S. 304A of the I. P. C., the Resident thought the application inadmissible. "S. 14, though general in its terms, i.e., applies to "any person," must be read "subject to the provisions of any law or treaty "in force (S. 1). Under the Instrument of Transfer "the Maharaja has renounced all plenary "jurisdiction over European British subjects, "and consequently the Darbar Courts can not try the "accused in this case -

In the case of requisitions made to Govt. under s. 14 of the Act, the question whether extradition should be granted is one entirely for disposal by Government.

"The law relating to offences
"and to criminal procedure for
"the time being in force in British
"India applies to all European
"British subjects in Mysore (S.B), and
"they are to be tried for offences committed
"by them in Mysore by Justices of the
"Peace" appointed by the G.G. in C.C. under
"S.6. The European officers of the Mysore
"Govt who have been so appointed are,
"as such, in no way subject to the
"control of any of the Darbar's Courts, and the Darbar can not
"ask for the extradition of an accused person for the purpose
"of making him over to a Justice of the Peace for trial."

"A J.P. for Mysore can no doubt try a European British subject
"so long as the latter is within the limits of the Mysore state; but should
"the accused happen to be in British India, the J.P. can only by means
"of a warrant procure his arrest and presence, for the warrant
"cannot be executed in British India under S. 82 of the Cr. P. Code, because
"it is not a warrant issued by a Court under that Code (vide S. 75 Cr.P.C.)."

For the above reasons, the Resident (C.S.D. Division) considered the only
course left to him to be under S. 188 of the Code, and he acted a Certifi-
that the charge was one which ought, in his opinion, to be enquired into British India.

On the question how far reciprocity could be obtained for the processes of Mysore the G.G. in C.L was doubtful whether complete reciprocity was attainable legislative action on the part of Govt. he considered that under existing circumstances it was not desirable to resort action. But the provisions of the Indian already ap (?) British I to take some of the proces Civil and Criminal Courts in Mysore in the opinion Govt of India power was to prevent an miscarriage justice. "A Criminal the Extradition Act XI of 1872 Cen the necessary

Mr. Sandford thought that an effective [illegible] doubted whether it would be equitable to enforce respect to the processes of British Courts in Mysore so long as reciprocity did not exist. But Mr. Saunders, chairman, observed from the analogous case of the Central Provinces and Berar that no serious difficulty would arise in establishing a system of complete reciprocity. Mr. Gordon, Junr. Secretary to Ch. Com., recommended that complete reciprocity in the matter of criminal offences should be established between the districts of Mysore, Coorg, Wynaad and the Nilgiris; and that for the rest of British India a definite list of offences should be drawn up, and mutual surrender should be made in regard to such offences only. This arrangement could be effected without legislation by the exercise of the authority vested in the Govt of India under the last clause of S. 11 of the Extradition Act XI of 1872, the second schedule of the Act being consequently enlarged.

"The Chief Commr. is a Political Agent for the purposes of this Act. Therefore under S. 9 any British "European or Native, who commits any offence "in Mysore and then enters British India may be tried in British India as if the offence had been committed there. "The Ch. Commr. certifies that the charge "which ought to be enquired into in British India. And as the Chief Commr. is "serving the executive government of a Foreign

It be noted that, he arrest and sur- offenders flying sh India into Mys- ovided for by spec- under which the va- malities attending rdition of criminal ensed with, iprocal arrangement rd to the ar- offenders escaping ore into British cases should be rictly in accor he provisions o 1879.

may apply to the British Govt. under S. 14
"of the Act for the surrender of any
"person, whether a British subject or
"not, who is accused of having com-
"mitted an offence in Mysore. Further,
"if any person not being a European British
"subject is accused of having committed
"in Mysore one of the offences specified
"in Sched. II of the Act, the Ch. Comm.r may issue
"a warrant for his arrest under S. 11,
"and this warrant will be executed by
"the Magistrate of any District in Bri-
"tish India in which the accused
"may be found. Assuming, then,
"that the list of offences specified in
"Sched. II of the Act includes all offences
"for which the extradition of criminals
"between different States is thought
"actually necessary, the provisions of
"the Act would, in the opinion of the
"G-G. in C., be practically effective
"for the purposes of Law and Police
"in Mysore. It is true that the exact
"reciprocity contemplated ~~by the enactment~~ by the chiefs and
"Mr Golden] would not be attained. Both
"the G-G. in C. considers that the slight
"advantage conferred on British Courts
"by the difference of procedure is of no
"material consequence ....."

"Briefly therefore the procedure to be
"observed for the future by the Courts of
"Mysore and British India in regard to the
"execution of civil and criminal processes
"would be as follows: The processes of
"British Courts would be executed in Mysore
"directly in the same manner as the
"processes of Mysore Courts. The pro-
"cesses of Mysore Courts would be executed
"in British India to the extent and in the
"manner provided for by Act XI of 1872
"and by the Civil Procedure Code, the service
"of summons being ensured by executive
"orders."

With his letter No 5240 dy 1-12-99. A reminder has since been rec?

Note.

The Resident forwarded for criticism & suggestions of the Darbar, an extract from a draft "Manual for the guidance of Magts and Police officers in the Native States" sent officially to him.

This was referred to Rangaswami Iyengar, D.S. of Police, under orders of the officiating Dewan. Mr. Rangaswami Iyengar's report is enclosed. Therein he draws attention to two points:

(1) The proper amount of the fee payable for the execution of warrants under Act XIII of 1859:

(2) Whether or not the Darbar is competent to apply for the surrender of European British subjects under S. 14 of the Foreign Jurisdiction & Extradition Act.

I venture to think that point No. (2) does not arise from anything contained in the draft manual, and that this is not a convenient occasion for raising a constitutional question of such great importance and delicacy.

As regards point no. (1), a careful study of the orders on the subject reveals some amount of confusion as to what the fee really is.

The fee in the case of warrants issued by magistrates in the Madras Presy. under Act VIII of 1859 was originally fixed at Rs 7. It was subsequently reduced to 5 Rs in Sept 1879 as regards Wynad, and in Octr. of that year as regards all Madras districts.

Chief Commrs order no 8761-Jus 12 dt 21-1-79. Sl 3 in Jus file 66 of 1892.

Do no 4570-J. 77 dt 16-9-79 Sl no. 19 in ditto. Also Sl no. 24.

As regards Coorg on a representation made by the Chief Commr of that Province, the fee was fixed at Rs three. The notifn, the terms of which should be carefully noticed, runs thus:-

Delvers notifn no 342 dt 26-3-84. Sl no 57

"In supersession of the existing orders on the subject, the Governor directs that a fee of Rs three be charged for executing in Coorg upon the first warrant that may be issued from Coorg under the Breach of Contract Act. The second and succeeding warrants will be executed free of all charge in cases in which the first warrants remain unexecuted."

There can, I think, be no question that this notifn applies only to Coorg, and that the fee of Rs 5 for warrants from the Madras Presidency remained unaffected.

(But see the letter to Chief Commr of Coorg on Sl no 56, where the fee is (wrongly) said to be Rs 4.

In the Governor Order Camp no. 1234-41 dt 16-11-86, para 2, Sl no 59,

it was asserted that "warrants issued by Magistrates in the Madras Presidency or Coorg under Act X III of 1859 ... must as heretofore be accompanied by a fee of ~~Rs~~ 4 for each person" &c &c.

Two mistakes were made in this, referring to Madras and Coorg in one breath, ~~this~~ in assuming as the fee for the former was really Rs 5, and that for the latter Rs 3.

Sl no 63

The Chief Comm^r of Coorg having enquired whether ~~malicalg~~ "Rs 4" ~~therein~~ was not a clerical error for "Rs 3," it was admitted that it was, and an erratum notice making this substitution was issued. It is hardly necessary to point out that even with the substitution ~~that~~ taken the ~~Act~~ Order of 1886 embodied an error of fact as regards the fee for Madras districts.

Sl no 65.

Sl no 64.

Affgn Proc^s no 13020-7-278 d/ 19-2-91, which was the result of a reference made by the ~~District~~ Magt of the Nilgiris, it was stated to have been clear "that the fee, where it is leviable, is Rs 3 only."

Sl no 67

The matter is therefore in some degree of confusion. But I think that para 44 of the draft Madras Manual fixes the correct amount of fee, as laid down by the Hyder

Chief Commr. in 1879, though it is to be feared that since the order of 1894, the practice in Mysore has been to levy Rs 3 only.

[* The Jud Branch has no information on this subject.]

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There is a slight error in para 43 of the draft Manual, viz that "the instrument of transfer" should be "the Schedule to the Instrument of transfer."

//

I have gone through the draft instructions with some degree of care, and have compared them as far as practicable with the orders on the subject; and I find that (subject to the preceding remarks) the instructions seem to embody the existing practice with substantial accuracy.

// Subject to these few orders, on receipt of which a complete draft will be put up.

1-2-00

I agree.

Draft noted. - The fee is being levied as mentioned & inspected. Rs 3-

5-2-00

Please draft a Ntfn as early as possible. In the meantime send a circular to all Districts enquiring what fee is being levied in each District.

1/2/00.

Mysore.

43. The arrangements in force for obtaining the arrest and return of offenders escaping from British India into Mysore date from the time when Mysore was administered by a Chief Commissioner under the Government of India. The Chief Commissioner directed by a notification, dated 23rd July 1878, that all criminal processes of whatever description issued by any Magistrate having jurisdiction in any District in British India should be acted upon and executed by Magistrates and Police officers in Mysore under the same conditions, and in the same manner, as if they had been issued by a Magistrate having jurisdiction in Mysore. Upon the rendition of the State, this provision was included in the instrument of transfer, as one of the rules which the Durbar was bound to maintain, and the conditions are therefore now the same as before the rendition. When the surrender of a fugitive escaping to Mysore is desired, a British Magistrate may send his warrant or summons by post to the Magistrate of the District or Taluk in Mysore in which the offender is supposed to have taken refuge. Postage stamps sufficient to cover the cost of return postage should accompany the process. In the case of a warrant the offender will be arrested by the Mysore police, who will convey him to the frontier and hand him over to the officer in charge of the nearest police station in British territory. Arrangements should be made for receiving prisoners so delivered, and producing them before the Magistrate. In any case in which it may appear to be desirable, the warrant, instead of being sent by post, may be handed over to an officer of the British police who will produce it before the Magistrate having jurisdiction in that part of Mysore in which the fugitive is supposed to have taken refuge. The further steps for the arrest of the offender will then be taken by the Mysore authorities, and the policeman taking a warrant into Mysore territory should on no account himself arrest an offender; his action should be confined to assisting the Mysore police, if required to do so. (1)

44. In the case of warrants under Act XIII of 1859 sent to Magistrates in Mysore for execution, a sum of Rs. 5 should accompany the warrant, to cover the cost of batta to the prisoner, and of escort charges. In other cases these charges are borne by the Mysore State.

SECTION IV.

EXTRADITION TO NATIVE STATES IN INDIA.

84. The law which regulates the procedure to be followed in British India upon the receipt of requisitions for the surrender of criminals who have fled from justice out of a Native State into British India is contained in Act XXI of 1879. That enactment lays down two courses by which a Native State can procure the extradition of an absconding criminal:—

(*a*) By applying to the Political Agent for the surrender of the fugitive (section 11). The Political Agent is authorised by the Act to comply with such demands in cases of grave crime falling under the schedule to the Act.

(*b*) By making a requisition to Government (section 14). The latter procedure will usually be adopted only in cases in which the Political Agent is not competent to surrender the fugitive, that is to say, in the case of petty offences.

85. The following rules have been issued by the Government of India in regard to the exercise by Political Agents of the power conferred on them by section 11 of Act XXI of 1879:—

(1) The Political Agent shall not issue a warrant under section 11 of the Act in any case which is provided for by Treaty, if the Native State expressly desires to abide by the procedure of the Treaty, nor in any case in which application for surrender is made under section 14 to the Governor-General in Council or any local Government.

(2) The Political Agent shall not issue a warrant under section 11, except on a request preferred to him in writing by, or by the authority of, the person for the time being administering the executive Government of the Native State at which he is the British representative, and on the understanding that the provisions of Act XI of 1872 (now XXI of 1879), and of these rules are to apply to the case.

(3) If the accused be a British subject, the Political Agent shall, before issuing such a warrant, consider whether he ought not to certify the case as one for trial in British India; and he shall, instead of issuing a warrant, so certify the case, if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India than in the Native State.

(4) The Political Agent shall in all cases, before issuing a warrant under section 11, satisfy himself by preliminary inquiry, that there is a *prima facie* case against the accused, and that the charge is not prompted by political motives.

(5) If the person surrendered under the warrant of a Political Agent, issued under section 11, be not a British subject; or if, such person being a British subject, the Courts of the State, either by custom or by the express recognition of the Governor-General in Council, try Native British subjects surrendered to them by extradition, and the Political Agent after hearing the statement of any of the accused and making such further enquiry as he may deem necessary is still satisfied that there is a *primâ facie* case against the accused, and that the charge is not prompted by political motives; the Political Agent shall make over the accused to be tried by the ordinary Courts of the State in which the offence was committed; provided that the Courts of the State have, by custom or recognition as aforesaid, power to inflict the punishment which may be inflicted under the Indian Penal Code for the offence with which the accused person is charged.

(6) If the accused be a British subject, but the Courts of the State do not by custom or recognition as aforesaid try Native British subjects, the Political Agent shall dispose of the case himself.

(7) If the punishment which may be awarded under the Indian Penal Code for any offence for which an accused person has been surrendered as above be more than the Courts of the State, by custom or recognition as aforesaid, inflict, the Political Agent may try the case himself, if he thinks it advisable to do so.

(8) Notwithstanding anything in the three preceding Rules, the Political Agent shall try any such case himself or make it over for trial by the ordinary Courts of the State, if he be generally or specially instructed by the Governor-General in Council or the Governor in Council so to do.

(9) In cases made over for trial by the Courts of a Native State under Rules 5 and 7, the Political Agent shall satisfy himself that the accused receives a fair trial, and that the punishment inflicted in the case of his conviction is not excessive or barbarous; and if he is not so satisfied, he shall demand the restoration of the prisoner to his custody pending the orders of Government.

(10) A return of all persons made over for trial by the Courts of a Native State under Rules 5 and 7 shall be submitted half-yearly by the Political Agent to the Government of India or the Government of Madras or Bombay, as the case may be, in the following form:—

Hal-fyearly Return, under Rule 10 *of the Rules under the Extradition Act* (*XXI of* 1879), *of persons made over by the Political Agent at* *for trial by the Courts of Native States under Rules* 5 *and* 7, *for the half-year ending* $\frac{30th\ June}{31st\ December}$.

Number.	Name of person.	Nationality.	Offence with which charged.	Where arrested.	Date of surrender.	Native State to which surrendered for trial.	Reasons for surrender.	Nature of sentence passed, with date of sentence.	Remarks.

(11) Persons arrested in British territory on a warrant issued by a Political Agent under section 11, and persons arrested on a warrant issued under section 14, shall be treated as far as possible in the same way as persons under trial for a similar offence would be treated under the Code of Criminal Procedure or under the procedure in force in the Presidency towns, if the arrest take place within any Presidency town.

(12) Persons sentenced to imprisonment by the Political Agent shall, if British subjects, be conveyed to the most convenient jail in British territory, there to be dealt with as though the conviction had taken place in a Court of British India; provided always that no appeal shall thereby be given other than is allowed by any rule for regulating appeals from the decisions of the Political Agent.

86. Certain additional instructions for the guidance of Political Agents, contained in letter from the Government of India No. 53-J., dated 6th May 1875, are printed in Appendix XIV.

87. Section 13 of the Act vests in Government the power to issue directions to Political Agents in regard to the surrender for trial by the Courts of Native States of fugitives for whose rendition application is made under section 11. In the case of the Resident in Travancore and Cochin, full discretion is allowed in this matter, but the Government has directed in regard to fugitives from the Native States of Pudukkóttai, Banganapalle, and Sandur, that the Political Agents concerned should decline to direct the surrender of British subjects, except in the case of non-heinous offences, and should proceed against them as if the crime had been committed in British India under sections 188 and 189, Criminal Procedure Code. Heinous offences have been defined as those which are triable in British India by a Court of Sessions only, or which, in the opinion of the Political Agent, would be properly committed to a Court of Session by a Magistrate having jurisdiction to try it himself.

88. In the case of requisitions made to Government under section 14 of the Act, the question whether extradition should be granted is one entirely for disposal by Government.

89. Magistrates in this Presidency receiving warrants of arrest directed to them by Political Agents under section 12 of Act XXI of 1879, are bound to execute such warrants, and are not authorized to make any enquiry as to the sufficiency of the evidence against the accused person. It is for the Political Agent to satisfy himself before he issues his warrant that a *primâ facie* case has been established.

90. It should be noted that although the arrest and surrender of offenders flying from British India into Mysore is provided for by special rules (*vide* paragraph 43) under which the various formalities usually attending the extradition of criminals are dispensed with, no reciprocal arrangement exists in regard to the arrest of offenders escaping from Mysore into British India. Such cases should be dealt with strictly in accordance with the provisions of Act XXI of 1879.